

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Second Appeal No.219 of 2006

JUDGMENT:

This is a Second Appeal by the unsuccessful defendants 1, 3, 4 and 6 assailing the judgment and decree dated 27.07.2004 of the learned Senior Civil Judge, Narsipatnam made in A.S.No.120 of 1999 (old A.S.No.19 of 1999), whereby, the learned Senior Civil Judge having allowed the first appeal had set aside the decree and judgment dated 02.08.1999 of the learned Junior Civil Judge, Narsipatnam made in O.S.No.19 of 1993 filed for perpetual prohibitory injunction to restrain the defendants and their men from ever interfering with the plaintiff's/respondent's peaceful possession and enjoyment of the 67 palmyrah trees situate on the Southern Bund of the land in an extent of Ac.2-03 cents of zeroiti wet and dry lands in one single plot though comprised in various extents and survey numbers of Gurandharapalem village of Narsipatnam Mandal, more fully described in the schedule annexed to the plaint.

2. At the time of admission of the Second Appeal, this Court had formulated the following substantial question of law:

“Whether the suit simpliciter for declaration without seeking title is maintainable when the title to the disputed hedge was denied by the appellants?

3. To adjudicate the *lis* and to answer the substantial question formulated, it is necessary to refer to the cases of the parties. The case of the plaintiff is that the plaintiff had purchased the plaint schedule land along with standing trees therein under a registered sale deed dated 11.01.1974 from its true and original owner Karri Suryanarayana and his wife Varahamma and that ever since the date of the said purchase, the plaintiff has been in exclusive possession and enjoyment of the plaint schedule lands along with 71 palmyrah trees standing on the Southern Bund of the said plaint schedule land without any interruption and by paying the land revenue and that while

so, the defendants had tried to interfere with her peaceful possession and enjoyment of the palmyrah trees in the suit schedule lands and on that the plaintiff had got issued a notice and that to the said notice, the defendants gave a reply with false allegations and that therefore, she is constrained to file the suit for perpetual injunction. *Per contra*, the case of the defendants is that the plaintiff never purchased the disputed 71 palmyrah trees nor was the plaintiff in possession and enjoyment of the plaint schedule land or palmyrah trees located therein within 12 years from the date of filing of the suit or at any point of time and that the plaintiff's vendor also was never in possession and enjoyment of the said disputed palmyrah trees and that out of the 71 disputed palmyrah trees, 35 trees are located on the Southern Bund of the land in Sy.No.289/4 to an extent of Ac.0.58 cents belong to the father of the 2nd defendant by name Chinna Kannayya Naidu and his brother and the said land is known as 'Yerramadi' and the remaining 36 palmyrah trees on the Southern side also belong to the defendants and that the disputed palmyrah trees have been in possession and enjoyment of the defendants and that their predecessors for more than 60 years and that the 1st defendant had cut down four palmyrah trees located in his land known as 'Boddumadi' and that the plaintiff has nothing to do with the palmyrah trees cut and removed by the 1st defendant and that therefore, the suit may be dismissed.

4. At the time of trial, the plaintiff and her witnesses were examined as PWs1 to 3 and exhibits A1 to A9 were marked on her side. The 4th defendant, the 6th defendant and their witnesses were examined as DWs 1 to 7 and exhibit B1 was marked on their side. On merits, the trial Court had dismissed the suit of the plaintiff. As already noted the Court of first appeal had allowed the appeal and had decreed the suit of the plaintiff in respect of 67 standing palmyrah trees, which are the subject matter of the *lis*.

5. Aggrieved of the said judgment of the Court of first appeal, the defendants 1, 3, 4 and 6 had preferred this second appeal by impleading the 2nd and 5th defendants as respondents 2 and 3 in this second appeal. The

1st respondent is the plaintiff.

6. Now, the substantial question is taken up. The only contention of the unsuccessful defendants is that when the title of the defendants was denied even prior to the suit, the suit for bare injunction without seeking declaration of title to the palmyrah hedge is not maintainable. The defendants in their written statement had also contended that the suit for mere injunction is not maintainable without a prayer for declaration of title. Though the plaintiff filed the suit for perpetual injunction, it is not disputed before this Court that in a suit for perpetual injunction if the facts so warrant the question of title can incidentally be gone into. The plaintiff having examined herself as PW1 to prove her contentions about the purchase of the suit schedule lands had testified in line with her case and had exhibited exhibit A1, the registered sale deed dated 11.01.1974 executed in her favour in respect of the suit schedule land and she had further deposed that ever since such purchase, she is in possession of the suit schedule lands including 71 palmyrah trees on the Southern Bund of the suit schedule land. She had also examined two independent witnesses in support of her case and to corroborate her version. She had further exhibited A2 and A3, the land revenue receipts, and also the office copies of legal notices, exhibits-A4, A5 and A6 and the reply notice exhibit-A8. She had further exhibited the office copy of police complaint as exhibit A8 and the office copy of the pattadar passbook in respect of the suit land as exhibit A9. Her consistent evidence is well corroborated by other evidence on record. *Per contra*, the 4th defendant, who was examined as DW1 was not consistent in his evidence. In his evidence, he had made admissions which are favourable to the case of the plaintiff to the effect that the plaintiff's vendor has got right and title to the suit schedule lands to sell the same to the plaintiff but also stated that the plaintiff's vendor had purchased some other piece of land but not the suit schedule land as is evident from exhibit B1, the registration extract of the sale deed of the vendor and had further admitted that his father sold the land under exhibit B1 to the plaintiff's vendor and that the plaintiff's vendor exchanged the suit land with the land purchased by him and that the disputed palmyrah trees are located

in the suit schedule lands which are purchased by the plaintiff about 24 years back. The 6th defendant, who is examined as DW2 stated that his land is to the South of the suit schedule lands purchased by the plaintiff in the year 1974 and that the lands are separated by palmyrah hedge and the said palmyrah hedge has been in his possession and enjoyment since 1988, i.e., since the date of his purchase from Kovvuramma and her daughter Nookalamma. However, the 6th defendant (Dw2) had not exhibited any document in support of his oral evidence. In exhibit A6, reply notice got issued by him, he had stated that the disputed palmyrah trees are located in 'Merakapolam' which is in his exclusive possession but when it came to evidence, he had stated that the disputed palmyrah trees are not located in 'Merakapolam' and there is no land known as 'Merakapolam'. Both the witnesses DWs 1 and 2 did not state about the pleaded defence in the written statement that some of the disputed palmyrah trees are located in Ac.0.58 cents in Sy.No.289/4 known as 'Yerramadi'. The evidence of the other witnesses is of no avail to the defendants when their own evidence given on their behalf by DWs 1 and 2 is supporting the case of the plaintiff and not their defence. DW7 is the Village Administrative Officer of the village and his evidence is also inconsistent as he had stated at one stage that the disputed palmyrah trees are to the North of the suit schedule lands and had stated at another breadth, that the disputed palmyrah hedge is located in the land covered by Sy.No.289/4. The suit schedule land in different extents in different survey numbers is of a total extent of Ac.2.03 cents and it also comprises of Ac.0.58 cents in Sy.No.289/4 (wet). Therefore, on a over all consideration of the oral and documentary evidence in the right perspective, the Court below had come to a correct conclusion that the disputed palmyrah trees are in the suit schedule land. It is pertinent to note that in the defence pleaded in the written statement of the defendants, it is stated that 35 out of 71 palmyrah trees are located on the Southern Bund of the land in Sy.No.289/4 to an extent of Ac.0.58 cents belonging to the father of the 2nd defendant by name Chinna Kannayya Naidu and his brother. But strangely, the 2nd defendant did not enter into the witness box. Though it is also urged

that the 1st defendant had cut and removed four palmyrah trees and that the plaintiff has nothing to do with the same even the 1st defendant was not examined as a witness. Thus, the evidence on record proves that the disputed palmyrah trees are in possession and enjoyment of the plaintiff and that the said palmyrah trees are located on the Southern Bund of the suit schedule land purchased by her under exhibit A1, registered sale deed. On such analytical examination of the evidence on record, this Court does not find any legal infirmity either in appreciation of facts or evidence, in the judgment of the court below warranting interference. In fact, the plaintiff had established incidentally that she had purchased the suit land under exhibit A1, registered sale deed. The defendants, particularly, the appellants did not claim title with reference to any document in their defence. Their mere claim is that 35 palmyrah trees are located on the Southern Bund of the land known as 'Yeeramadi', which belongs to the father of the 2nd defendant and that the remaining 36 trees also belong to the defendants and they are enjoying the said trees since a long time. Thus, the defendants had claimed mere possession over the said disputed trees and that does not mean that a cloud is raised over the plaintiff's title and that the plaintiff who is owner of the land should file a suit for declaration of title. Unless the defendants raise a serious cloud on the title of the plaintiff, there is no need for the plaintiff to file a suit for declaration. The plaintiff who had title and possession over her land particularly the disputed palmyrah trees only wanted to protect her possession and therefore, sought a perpetual injunction in respect of the trees for peaceful enjoyment of the usufruct from the trees. Further, the plaintiff had proved by cogent evidence her lawful possession and therefore, the contention that the suit for injunction is not maintainable without seeking declaration of title in regard to the palmyrah hedge, is devoid of merit both under facts and law. Seeking declaration of title is not a condition precedent in all cases. And, when the plaintiff is able to incidentally establish her title to the suit land, particularly the disputed palmyrah trees, and also her lawful possession of the same, her suit for perpetual injunction simpliciter must be held to be maintainable. Viewed thus, this Court finds that the second appeal

is devoid of merit and the substantial question of law is accordingly answered against the appellants.

7. In the result, the Second Appeal is dismissed with costs. Miscellaneous petitions, if any, pending in this appeal shall stand dismissed.

M. SEETHARAMA MURTI, J

02nd JUNE 2014
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